

ESTTA Tracking number: **ESTTA317139**

Filing date: **11/17/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

|                        |  |
|------------------------|--|
| Proceeding             | 91185884   |
| Party                  | Plaintiff<br>Dating DNA, LLC   |
| Correspondence Address | Colbern C. Stuart, III, Esq.<br>Lexevia, PC<br>4139 Via Marina PH 3<br>Marina del Rey, CA 90292<br>UNITED STATES<br>diane@mmip.com, colestuart@yahoo.com, kevinc@xsmail.com,<br>olsonchadh@gmail.com |
| Submission             | Motion to Consolidate  |
| Filer's Name           | Diane L. Gardner   |
| Filer's e-mail         | diane@mmip.com   |
| Signature              | /Diane L. Gardner/   |
| Date                   | 11/17/2009   |
| Attachments            | 2009111701.pdf ( 3 pages )(79091 bytes )   |

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

|                        |   |                |                   |
|------------------------|---|----------------|-------------------|
| Dating DNA, LLC,       | ) | Serial No.     | : 77/258,529      |
|                        | ) | Mark           | : VISUALDNA       |
| Opposer/Respondent,    | ) | Opposition No. | : 91185884        |
|                        | ) |                |                   |
| v.                     | ) | Serial No.     | : 77/715,869      |
|                        | ) | Mark           | : VISUALDNA SHOPS |
| Imagini Holdings Ltd., | ) | Opposition No. | : 91191912        |
|                        | ) |                |                   |
| Applicant/Petitioner   | ) |                |                   |
|                        | ) |                |                   |

**MOTION TO CONSOLIDATE PROCEEDINGS**

The subject parent proceeding is currently suspended pending consideration of Opposer's Motions to Compel Discovery and to Re-Open Discovery, and Applicant's Responses thereto. The Interlocutory Attorney has directed that the parties to this opposition should not file any papers that are not germane to the pending Motion to Compel. Opposer believes, however, that the present Motion to Consolidate is germane to the Motion to Compel (and accompanying Motion to Re-Open Discovery) in that grant of this Motion would necessarily tie the discovery proceedings to the junior opposition, thereby making the prior Motions moot.

Pursuant to Fed. R. Civ. P. §42(a), Opposer moves to consolidate the subject opposition proceedings in the interest of judicial and pecuniary economy. The proceedings involve parallel parties, similar marks, and common issues of fact and law<sup>1</sup>. For example, Applicant's affirmative defenses and counterclaims for cancellation filed in the respective Answers to Notice of Opposition are nearly identical. Both Answers address issues relating to the propriety of the assignment and ownership of one of the marks asserted by Opposer, and the alleged abandonment of said mark.

---

<sup>1</sup> *World Hockey Ass'n v. Tudor Metal Products Corp.*, 185 USPQ 246, 248 (TTAB 1975) (oppositions involving similar marks and similar issues consolidated); and *Federated Department Stores, Inc. v. Gold Circle Insurance Co.*, 226 USPQ 262, 263 (TTAB 1985) (consolidation permitted; issues of fact and law substantially similar).

Insofar as consolidation of the cases does not result in the cases losing their separate identities, any remaining issues unique to each proceeding may still be addressed and separate judgments entered for each case<sup>2</sup>. Therefore, Opposer respectfully requests an Order granting consolidation of the proceedings.

No fees are believed due. Please apply any charges or credits to Deposit Account No. 50-3137.

Respectfully submitted,

Date: 17 NOV 2009

Diane L. Gardner

Colburn C. Stuart, III, Esq.  
Diane L. Gardner, Esq.  
Lexevia, PC  
4139 Via Marina PH3  
Marina Del Rey, CA 90292  
(310) 746-6112

8370.doc

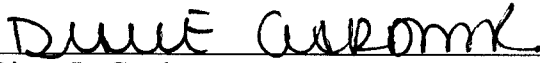
---

<sup>2</sup> TBMP §511.

**CERTIFICATE OF SERVICE**

I hereby certify that I served a copy of the foregoing MOTION TO CONSOLIDATE PROCEEDINGS upon Applicant by depositing one copy thereof in a sealed envelope in the United States mail, first class, postage pre-paid, on November 17, 2009, addressed as follows:

Beth Goldman  
Orrick Herrington & Sutcliffe LLP  
4 Park Plaza, Suite 1600 IP Prosecution  
Irvine, CA 92614

  
\_\_\_\_\_  
Diane L. Gardner